

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY 14 2008

DAVID J. MALAND, CLERK

BY

DEPUTY _____

UNITED STATES OF AMERICA

§

§

v.

§

CASE NO. 4:05CR18

§

DERRICK WAYNE BURNETT

§

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on April 29, 2008 to determine whether the Defendant violated his supervised release. The Defendant was represented by Denise Benson. The Government was represented by Ernest Gonzalez.

On October 26, 2005, the Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to 24 months imprisonment, followed by a 3-year term of supervised release for the offense of Possession of a Firearm While Addicted to or an Unlawful User of a Controlled Substance. On February 8, 2007, Defendant was released from custody and ordered to commence service of a 3-year term of supervised release.

On April 15, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (Dkt. 33). The petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month; (2) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test

within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court; (3) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician; (4) Defendant shall not illegally possess a controlled substance and shall refrain from any unlawful use of a controlled substance; (5) Defendant shall participate in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time as Defendant is released from the program by the probation officer.

The petition alleges that Defendant committed the following violations: (1) Defendant failed to submit a written monthly report within the first five days for the months of July and September 2007 and January, February, and March 2008; (2) Defendant submitted urine specimens that tested positive for marijuana on August 27, November 14, and December 29, 2007, and January 3, 12, and February 27, 2008; (3) on July 23 and December 15, 2007, and January 26, February 5, 9, and 23, and March 3, 2008, Defendant failed to submit a urine specimen for testing as instructed, and on March 19 and 26, 2008, Defendant failed to attend drug aftercare counseling as instructed, and, on April 4, 2008, Defendant was unsuccessfully discharged from drug aftercare at Addiction Recovery Center for failure to participate in the random urinalysis program and failure to attend drug aftercare counseling.

Prior to the Government putting on its case, the Defendant entered a plea of true to the alleged violations and waived his right to allocution before a district judge. At the hearing, the Court recommended that Defendant's supervised release be revoked based on those violations.

RECOMMENDATION

The Court recommends that the District Court revoke the Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that the Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of six (6) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in the Bureau of Prison Facility in Seagoville.

SIGNED this 12 day of May, 2008.


DON D. BUSH
UNITED STATES MAGISTRATE JUDGE